



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

November 7, 2008

REGISTERED MAIL
RB 670 356 930 US

Wildlands of Washington, Inc.
Attn: Sky Miller
1800 4th Street, Suite A
Marysville, WA 98270

RE: Water Quality Certification Order #6195 for U.S. Army Corps of Engineers (Corps) Reference #NWS-2007-1973-NO to preserve and restore approximately 354 acres of formerly tidally-influenced habitat, south of Steamboat Slough, Snohomish County, Washington.

Dear Mr. Miller:

On November 13, 2008, you submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act (CWA) for the proposed project.

This project proposes:

- Approximately 11.18 acres of impacts to existing palustrine wetlands.
- Placement of fill will occur in 3.49 acres of wetlands including 1.91 acres for construction of a berm and 1.58 acres for habitat creation.
- Up to 7.69 acres of wetland will be excavated for channel construction.
- The project will result in the preservation and restoration of 354 acres of prior-converted land and will re-establish tidal influence to 346 acres.
- The project will recreate and reconnect former sloughs to existing Snohomish River sloughs, restoring tidal marsh, riparian, and slough habitats.
- Once completed, the project will restore approximately 100 acres of intertidal marsh, 8 acres of upland, 230 acres of mudflat, 16 acres of subtidal slough, 18, 400 linear feet of riverine habitat, and 24,000 feet of off-channel habitat in the lower Snohomish River estuary.

Ecology issued a public notice for an individual Section 401 Certification on September 19, 2008, for the proposed project.

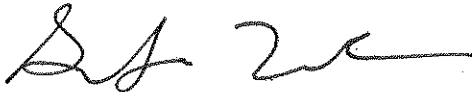


Wildlands of Washington, Inc.
November 7, 2008
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On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the JARPA and the July 11, 2008, public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Lori Lull at 425-649-7271, LENL461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Geoff Tallent
Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:lcl:cja

Enclosure

cc: Jonathan Smith, U.S. Army Corps of Engineers
e-cc: Lauren Driscoll, Ecology
ecyrefedpermits@ecy.wa.

IN THE MATTER OF GRANTING A)	ORDER #6195
WATER QUALITY)	Corps Reference No. NWS-2007-1973-NO
CERTIFICATION TO Wildlands of)	Blue heron Slough Habitat Conservation Bank.
Washington, Inc. in accordance with 33)	Project will preserve and restore approximately
U.S.C. 1341 (FWPCA § 401), RCW)	354 acres of formerly tidally-influenced habitat,
90.48.120, RCW 90.48.260 and Chapter)	Wetlands Along Steamboat Slough and Union
173-201A WAC)	Slough, Snohomish County, Washington.

TO: Wildlands of Washington, Inc.
 Attn: Sky Miller
 1800 4th Street, Suite A
 Marysville, WA 98270

On November 13, 2007, Wildlands of Washington, Inc. (Wildlands) submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on September 19, 2008.

The project proposes:

- Approximately 11.18 acres of impacts to existing palustrine wetlands.
- Placement of fill will occur in 3.49 acres of wetlands including 1.91 acres for construction of a berm and 1.58 acres for habitat creation.
- Up to 7.69 acres of wetland will be excavated for channel construction.
- The project will result in the preservation and restoration of 354 acres of prior-converted land and will re-establish tidal influence to 346 acres.
- The project will recreate and reconnect former sloughs to existing Snohomish River sloughs, restoring tidal marsh, riparian, and slough habitats.
- Once completed, the project will restore approximately 100 acres of intertidal marsh, 8 acres of upland, 230 acres of mudflat, 16 acres of subtidal slough, 18,400 linear feet of riverine habitat, and 24,000 feet of off-channel habitat in the lower Snohomish River estuary.

The project site is located on North Spencer Island, immediately south of Steamboat Slough in unincorporated Snohomish County (Sec. 3, 4, 9, and 10; Township 29N; Range 5E, W.M.), WRIA# 7, Snohomish Watershed.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §1311, 1312, 1313, 1316, and 1317 (FWPCA § 301, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions

- A1. For purposes of this Order, the term "Applicant" shall mean Wildlands of Washington, Inc. and their agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to the Washington State Department of Ecology, Northwest Regional Office, Attn: 401/CZM Federal Permit Coordinator, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order No. 6195 and Corps No. NWS-2007-1973-NO.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on November 13, 2007. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.

- A4. Within 30 days of receipt of an updated JARPA Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
- A5. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
- A6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
- A7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
- A9. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order.
- A10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
- A11. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per violation for each day of continuing noncompliance.

B. Construction Conditions

- B1. All work in and near the water shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control Best Management Practices (BMP's) suitable to prevent exceedances of state water quality standards shall be in place before starting clearing, filling and grading work and shall be maintained throughout construction.
- B2. The project shall be clearly marked/staked prior to construction. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Sensitive areas and buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment

operators. Equipment shall enter and operate within the marked clearing limits corridors and stockpile areas.

- B3. The Applicant shall ensure that no material is stockpiled within existing wetlands, streams or their buffers at the mitigation site at any time, unless included in the Ecology-approved mitigation plan.
- B4. Upon completion of site-grading and prior to planting, the Applicant shall submit to Ecology written confirmation that the finished grades are consistent with the approved mitigation plan or subsequent Ecology-approved plan changes. Written confirmation can be a signed letter from the surveyor or project engineer indicating how final elevations were confirmed and whether they are consistent with the plan.
- B5. The Applicant shall obtain and comply with all stormwater requirements within the National Pollutant Discharge Elimination System (NPDES) Stormwater General Permit for Construction Activity for this project.

C. Wetland Conditions

- C1. The Applicant shall implement the restoration plan as described in the *Blue Heron Slough Conservation Bank Agreement and Addendum #1* prepared by *Wildlands of Washington, Inc.*, dated *December 2007* and the *Blue Heron Slough Tidal Marsh Construction Plans* prepared by *Wildlands of Washington Inc.*, dated *April 17, 2008* (hereafter collectively referred to as the "restoration plan") except as modified in this Order.
- C2. The Applicant shall submit any changes to the restoration plan in writing to Ecology (see A.2) for review and approval before work begins or when problems occur during construction requiring plan changes.
- C3. To ensure proper installation, the Applicant's wetland professional must supervise and inspect all restoration site construction and planting.

Implementation

- C4. Within 90 days of completing each phase of the project, the Applicant shall submit a "Phase 'X' Construction report" summarizing what was done during that phase. The Phase 'X' Construction report shall include when the activities occurred, as well as a description of any changes to the restoration plan that occurred during construction or planting and any problems that were encountered. If there were changes made during construction, the Applicant shall submit as-built grading and planting maps and plant schedules documenting the changes.
- C5. If phase 1 is not completed within 13 months of the date of this Order, The Applicant shall submit a written status report on the construction and submit status reports every 12 months until construction (including planting) is complete and the Phase 1 Construction Report is submitted.

- C6. If phase 2 is not completed within 25 months of the date of this Order, The Applicant shall submit a written status report on the construction and submit status reports every 12 months until construction (including planting) is complete and the Phase 2 Construction Report is submitted.
- C7. If phase 3 is not completed within 37 months of the date of this Order, The Applicant shall submit a written status report on the construction and submit status reports every 12 months until construction (including planting) is complete and the Final As-Built is submitted.
- C8. Within 90 days of completing the entire restoration project, the Applicant shall record a conservation easement for the preserved area, a copy of Ecology's Order, and a copy of the as-built report. These documents must be recorded with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property.
- C9. Within 90 days of completing the entire restoration project, the Applicant shall submit an as-built report with maps to Ecology. The as-built report must:
- a) Document site conditions at Year Zero;
 - b) Be submitted to Ecology per Condition A.2 with one electronic file and one hard copy;
 - c) Include the information listed in Attachment B;
 - d) Included documentation of a recorded conservation easement.

Monitoring and Maintenance

- C10. The Applicant shall water and maintain all plantings at the restoration site to meet the restoration plan's performance standards.
- C11. The Snohomish County Noxious Weed Control Board requires control of purple loosestrife (*Lythrum salicaria*) and several species of knotweed (Bohemian knotweed [*Polygonum x bohemicum*], giant knotweed [*P. sachalinense*], Himalayan knotweed [*P. polystachyum*], and Japanese knotweed [*P. cuspidatum*]), all Class B noxious weeds. Any of these species, if present, shall be eradicated. Weeding and maintenance shall be performed as necessary to ensure that cover of these species is maintained at zero percent throughout the monitoring period. Any use of herbicide in wetlands must be performed by a pesticide applicator licensed by the Washington State Department of Agriculture and with an Aquatic Noxious Weed Control Permit from Ecology.

- C12. The Applicant shall monitor the restoration site for a minimum of five (5) years. The Applicant shall use the monitoring methods described in the approved restoration plan, or as revised and approved by Ecology.
- C13. The Applicant shall submit monitoring reports to Ecology (one on compact disc or via e-mail, and one hard copy [see A2. above]) for monitoring years one, two, three, five, at a minimum, the information in Attachment C.
- C14. The Applicant shall submit the Year One monitoring report no sooner than 12 months and no later than 24 months after submitting the as-built report.
- C15. The Applicant shall submit the reports for the remaining monitoring years (years two, three, five) no later than October 31st of the respective monitoring year.
- C16. The Applicant shall implement the approved restoration plan's contingency measures ("remedial actions") if goals, objectives, and performance standards are not being met.
- C17. The Applicant shall consult with Ecology if unidentified contingency measures are necessary.
- C18. When necessary to meet the performance standards, The Applicant shall replace dead or dying plants during the first available planting season with the same species or a native plant alternative appropriate for the location and note species, numbers, and approximate locations of all replanted materials in the subsequent monitoring report.
- C19. The Applicant shall delineate the wetlands as part of monitoring at the end of the monitoring period and include information on delineation in the monitoring reports.
- C20. To delineate wetlands, The Applicant shall use the *1997 Washington State Wetlands Identification and Delineation Manual* (or as updated) to determine the actual area of wetlands. All restoration areas shall be delineated including those that have been rehabilitated and enhanced.
- C21. The Applicant shall rate the wetlands at the end of the monitoring period and include the information in the monitoring report. All restoration areas shall be rated, except for non-wetland areas.
- C22. To rate the wetlands, The Applicant shall use the *Washington State Wetlands Rating System for Western Washington* (annotated August 2006) or as updated.
- C23. If The Applicant has not met all the conditions and performance standards at the end of the monitoring period, Ecology may require additional monitoring and/or additional wetland restoration.
- C24. The Applicant shall provide access to the site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- C25. The Applicant's responsibility to complete the required restoration as set forth in Condition C.1 of this order will not be considered fulfilled until they have received written verification from Ecology.

D. Timing Requirements

- D1. This Order is valid until all compliance requirements in this document have been met.

E. Notification Requirements

- E1. The Applicant shall provide written notification (FAX: 425-649-7271, e-mail: LENL461@ecy.wa.gov) or mail to Ecology's 401/CZM Federal Permit Coordinator, Northwest Regional Office, 3190 160th Avenue SE, Bellevue, WA 98008-5452, in writing at least three (3) days prior to the start of construction at the project site.
- E2. The Applicant shall provide written notification to Ecology's Northwest Regional Office Federal Permit Coordinator in writing within fourteen (14) days after completion of all construction phases.

NOTE: These notifications shall include the Applicant's name, project name, project location, the number of this Order, contact and contact's phone number.

F. Emergency/Contingency Measures

- F1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.
- F2. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:
- a. Cease operations that are causing the compliance problem.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
 - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.

- e. Immediately notify Ecology's 24-Hour Spill Response Team at 1-800-258-5990 of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.
- F3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters, including wetlands.
- F4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology's 24-Hour Spill Response Team at 1-800-258-5990.

G. Appeal Process

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Department of Ecology
Northwest Regional Office
Attn: Lori Lull
3190 160th Avenue SE
Bellevue, WA 98008

For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated November 7, 2008 at Bellevue, Washington.



Geoff Tallent, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

**WILDLANDS OF WASHINGTON, INC.
BLUE HERON SLOUGH HABITAT CONSERVATION BANK PROJECT
Water Quality Certification Order #6195**

**Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #6195 Section 401 Water Quality Certification for the Wildlands of Washington, Inc. Blue Heron Slough Habitat Conservation Bank Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

Signature

Date

Title

Company

Attachment B
Information for As-Built Reports
(See Condition C9)

WILDLANDS OF WASHINGTON, INC.
BLUE HERON SLOUGH HABITAT CONSERVATION
Water Quality Certification Order #6195
And
Corps Reference No. 200701973

Background Information

- 1) Project name.
- 2) Ecology docket number and the Corps reference number.
- 3) Name and contact information for the parties responsible for the restoration site including:
 - a) The applicant.
 - b) The landowner.
 - c) Wetland professional on site during construction of the restoration site.
- 4) Name and contact information for the party responsible for preparing the report.
- 5) Month and year the report was produced.

The Restoration Project

- 7) Brief description of the **final** restoration project with any changes from the approved plan made during construction. Include:
 - a) Directions to the site.
 - b) Who completed the restoration project (name, address, and phone number).
 - c) Acreage and type(s) (re-establishment, rehabilitation, creation, enhancement, and preservation) of mitigation authorized to compensate for wetland impacts.
 - d) Important dates including:
 - i. Month and year the wetland impacts occurred.
 - ii. When work on the restoration site began and ended.
 - iii. When different activities began and ended such as grading, removal of invasive plants, installing plants, and installing habitat features.
- 8) Description of any problems encountered and solutions implemented (with reasons for changes) during construction of the restoration site.
- 9) Any changes to the goals, objectives, and performance standards of the restoration project.
- 10) List of any follow-up actions needed, with a schedule.
- 11) 8 1/2" X 11" (or larger) final site maps of the restoration site(s) including the following (at a minimum). The final site maps should reflect on-the-ground conditions after the site work is completed. Include the month and year when the maps were produced and, if applicable, when information was collected
 - a) Geographic location of the site with landmarks.
 - b) Clear delineation of the project perimeter(s).
 - c) Topography (with a description of how elevations were determined),
 - d) Installed planting scheme (quantities, densities, sizes approximate locations, and the source(s) of plant material)
 - e) Location of habitat features.

- f) Location of permanent photo stations.
- 12) Photographs of the site at as-built conditions taken from photo stations (photo pans are recommended).
- 13) Copies of any records of deed notification or conservation easements.

Attachment C
Required Information for Monitoring Reports
(See Condition C13)

WILDLANDS OF WASHINGTON, INC.
BLUE HERON SLOUGH HABITAT CONSERVATION
Water Quality Certification Order #6195
And
Corps Reference No. 200701973

Ecology requires the following information, for monitoring reports submitted under this Order. Ecology will accept additional information that may be required by other regulators.

Background Information

- 1) Project name
- 2) Ecology docket number and Corps reference number
- 3) Name and contact information of the parties responsible for the mitigation site including:
 - a) The applicant
 - b) The landowner
- 4) Name and contact information for the party responsible for the monitoring activities and report
- 5) Who the report was prepared for (name, address, and phone number) *{if different from number 3 above.}*
- 6) Month and year the monitoring data were collected
- 7) Month and year the report was produced

Mitigation Project Information

- 8) Brief description of the mitigation project including:
 - a) Directions to the site
 - b) Acreage and type(s) (re-establishment, rehabilitation, creation, enhancement, and preservation) of mitigation authorized to compensate for wetland impacts
- 9) Brief description of monitoring approach and methods.
- 10) A list of the goals and objectives for the mitigation project
- 11) Summary table of monitoring data compared with performance standards. Using the monitoring data, describe how the site is developing toward goals and objectives and whether the project is in compliance with performance standards
- 12) Summary (including dates) of management actions (maintenance, contingencies, and corrective actions) implemented at the site(s)
- 13) Summary of any difficulties or significant events that occurred on the site that may affect the ultimate success of the project
- 14) Specific recommendations for any additional corrective actions or adaptive management with a time table
- 15) Summary of any lessons learned
- 16) 8 1/2" x 11" (or larger) maps of site(s) including, at a minimum, the following:

- a) The month and year when the maps were produced and, if applicable, when information was collected
 - b) The geographic location of the site with landmarks.
 - c) Clear delineation of the project perimeter(s).
 - d) Species, numbers, and approximate locations of all replanted material vegetation.
 - e) Location of habitat features.
 - f) Location of permanent photo stations and location of any other photos.
 - g) Location of sampling points or transects.
- 17) Photographs taken at photo stations from the most recent monitoring visit, which are dated and clearly indicate the direction from which the photo was taken. (We recommend photo pans.)